



Barnshaw Group Of Companies - Conditions of Purchase

1. DEFINITIONS

"The Buyer" means Barnshaw Section Benders Limited and any other Companies forming part of the Barnshaw Group of Companies

"The Seller" means the person, firm or company to whom this Purchase Order is addressed.

"The Goods" means the articles or materials or any of them to be supplied by the Seller to the Buyer pursuant to the Purchase Order (including any articles or materials supplied in connection with Services).

"Services" means work and/or services or any of them to be performed by the Seller for the Buyer pursuant to this Purchase Order.

"The Contract" means the contract for the sale of the Goods and/or provision of Services made between the Seller and the Buyer to which these Conditions apply.

2. APPLICATION

These Conditions shall apply to and be incorporated in the Contract and shall be in substitution for any oral arrangements made between the Buyer and the Seller and shall prevail over any inconsistent terms or conditions contained in or referred to in the Seller's quotation or acceptance of order or correspondence or elsewhere or implied by trade custom or practice or course of dealing and no addition to or variation of or exclusion or attempted exclusion of the Purchase Order and/or these Conditions or any of them shall be binding upon the Buyer unless in writing and signed by a duly authorised representative of the Buyer.

3. VALIDITY

The Buyer shall be bound by an Order only if issued on the Buyer's official written or faxed Purchase Order.

The Purchase Order may be cancelled by the Buyer at any time prior to its acceptance by the Seller. Following such acceptance Condition 22 shall apply.

4. ORDER ACCEPTANCE

The acceptance of the Purchase Order is limited to and conditional upon acceptance by the Seller of these Conditions.

The performance of Services or delivery of Goods by the Seller pursuant to the Order shall constitute acceptance of these Conditions of Purchase where acceptance has not previously been communicated to the Buyer.

5. QUALITY AND DESCRIPTION

It is a condition of the Contract that the Goods shall conform with the quality and description and other particulars of the Goods stated in the Purchase Order, shall conform to all samples, drawings, descriptions and specifications furnished by the Buyer to the Seller, shall be of merchantable quality and fit for any intended use expressly or impliedly made known to the Seller and free from all defects. Except insofar as the specifications otherwise indicate the Goods shall conform to the latest relevant British Standards specification or if none exists with the best standards of the industry. All Services shall be supplied in full accordance with the terms of the Purchase Order and shall be executed in a proper and skilful manner by properly qualified and experienced persons. These provisions shall survive any delivery, inspection, acceptance or payment pursuant to the Purchase Order and shall extend to any replacement, repaired, substitute or remedial Goods, and/or Services provided by the Seller with the consent of the Buyer.

6. HEALTH AND SAFETY

The Seller shall comply in all respects with Section 6 of the Health and Safety at Work Act 1974 in the performance of this Purchase Order.

7. QUANTITIES

The Seller shall deliver the quantity specified in the Purchase Order unless otherwise agreed in writing. The Buyer reserves the right to reject incomplete deliveries and return excess quantities at the Seller's expense and risk.

8. INSPECTION AND REJECTION

The Seller shall carefully inspect and test the Goods prior to delivery to ensure that they comply with the requirements of the Purchase Order and the Seller shall if so requested by the Buyer give the Buyer reasonable notice of any such tests and the Buyer shall be entitled to be represented thereat. The Buyer reserves the right to call for certificates of origin or test certificates for the Goods at any stage of manufacture/assembly. Such certificates must clearly state the Buyer's order numbers and any item/equipment numbers. If as a result of any inspection or test the Buyer finds that the Goods an/or Services do not comply with the Purchase Order or are unlikely on completion of manufacture/processing/performance so to comply it may inform the Seller and the Seller shall take such steps as are necessary to ensure such compliance. These rights are without prejudice to all other rights of the Buyer.

All Goods shall be received at the place of delivery subject to the Buyer's inspection and approval. Any Goods rejected as not conforming to the Purchase Order shall be returned at the Seller's risks and expense. The Seller shall replace any rejected Goods upon receipt of the Buyer's prior written authorisation with Goods which are in all respects in accordance with the Purchase Order and in accordance with the terms of such authorisation. If the Seller fails so to do the Buyer shall be entitled to purchase replacement goods from another source and the Seller shall indemnify the Buyer against all losses and expenses incurred by the Buyer in connection with the rejected Goods and/or the purchase of replacement goods.

9. DELIVERY

Time is of the essence in the performance of the Purchase Order. If delivery dates or the dates for the provision and/or performance of Services cannot be met, the Seller shall promptly notify the Buyer of the earliest possible date for delivery or the provision and/or performance of Services. Notwithstanding such notice the Buyer shall be entitled at its option to treat the Contract as repudiated in whole or in part. The Buyer shall be entitled to exercise its option at any time notwithstanding that it has acquiesced in any delay unless a duly authorised representative of the Buyer has granted the Seller a written extension of time for delivery and the said extension has not yet expired.

The Seller shall indemnify the Buyer against all losses (including consequential losses) incurred by the Buyer as a result of the Seller's failure to effect delivery on the date or dates originally specified including (save where an extension has been agreed and the Goods are delivered or Services performed within such extension) the costs incurred by the Buyer in purchasing substitute Goods and/or Services.

All Goods shall be properly packed and secured in such manner as to enable them to reach their destination in good condition. Goods shall be delivered by the Seller to the premises specified in this Purchase Order or as subsequently specified by the Buyer with advice notes quoting the Buyer's order number. Delivery shall be completed when the Goods have been unloaded at the point of delivery specified in the Order and the delivery has been accepted by a duly authorised agent, employee or site representative of the Buyer. No charge shall be made for carriage nor for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order; the Buyer shall not be responsible for returning any such materials.

Consignment or part deliveries may be rejected unless a duly authorised representative of the Buyer has agreed in writing to accept such deliveries.

The Goods may be rejected if the following documents (where applicable) are not supplied with the Goods:-

- (a) Test Certificates and/or Certificates of Conformity to BS EN ISO 9002;
- (b) Packing Lists showing our Order number, specification, size, quantity, net and gross weights.

Without prejudice to Condition 20 if for any reason the Buyer is unable to accept delivery of the Goods on the agreed delivery date the Seller shall at its expense store the Goods for a reasonable time having regard to the circumstances and shall safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery.

If a carrier is appointed in connection with any Order such carrier shall be deemed an agent of the Seller and not of the Buyer.

10. RISK

The Goods shall be at the Seller's risk at all times until delivery to the Buyer at its premises or as otherwise specified by the Buyer.

11. TITLE

The property in Goods purchased shall pass to the Buyer on delivery in accordance with this Purchase Order without prejudice to any right of rejection to which the Buyer may be entitled hereunder or otherwise.

Where the Buyer pays part of the contract price before taking delivery of the Goods or any part thereof then such payments shall be regarded as part payments of the contract price and not deposits and the property (but not the risk) in the Goods and in any materials procured for or manufactured by the Seller for the purposes of the contract, shall pass to the Buyer from the date of such payments up to the total value thereof. Risk shall pass upon delivery of the said Goods or materials to the point specified in the Order.

12. PRICES

All prices shall be as stated in the Purchase Order. If no price is stated for any item, the price of that item or Service shall be the lowest price currently quoted or charged at the date of the Purchase Order by the Seller for that item or Service but in no event higher than the price most recently charged to the Buyer by the Seller for that item or Service. All prices are fixed and inclusive of delivery and all other charges and dues are not subject to adjustment save as specifically provided in these Conditions, or unless specifically agreed otherwise in writing by a duly authorised representative of the Buyer.

If the Seller is registered for VAT it shall be required to issue a proper tax invoice in accordance with the relevant legislation before the Buyer shall be required to make payment for Goods and/or Services supplied in accordance with the Order.

13. PAYMENT

Unless otherwise stated in the Purchase Order invoices shall not be rendered by the Seller until completion of delivery of all of the Goods and/or performance of all Services the subject of the Order and payment shall be due 60 days from the end of the month following the receipt of the Seller's invoice.

The Buyer specifically reserves the right to deduct from any monies due or to become due to the Seller any monies due to the Buyer from the Seller.

14. INFORMATION

All specifications, drawings, sketches, models, samples, tools, designs, technical information or data and other information, (whether written oral or otherwise) furnished to the Seller by the Buyer or on its behalf shall remain the property of the Buyer and shall be returned promptly to the Buyer (together with all copies) at the Buyer's request. Such information shall be treated by the Seller as strictly confidential, shall be kept safely and shall not be used or disclosed by the Seller except strictly as required in the course of performance of this or any other Purchase Orders for the Buyer.

Unless the Buyer has otherwise agreed in writing, information furnished or disclosed by the Seller to the Buyer shall not be considered confidential or proprietary information and shall be acquired by the Buyer free of restrictions of any kind.

The Seller shall be wholly responsible for any discrepancies, errors or omissions in any information furnished to the Buyer whether such information has been approved by the Buyer or not.

15. TOOLS AND EQUIPMENT

All tools, special dies, moulds, patterns, jigs and other equipment furnished by the Buyer to the Seller and any replacements therefore shall remain the property of the Buyer and the Seller shall deliver the same up to the Buyer or its designee immediately upon request of the Buyer at any time. The Seller shall maintain the same in good order and condition and keep the same separately from the Seller's property and plainly identified as being the property of the Buyer, and shall not use the same except in fulfilling this or any other Purchase Order of the Buyer. All such items shall be held at the Seller's risk and shall be insured by the Seller at its expense for an amount equal to their replacement cost and with sums recovered payable to the Buyer.

16. BUYER'S MATERIALS

Where the Buyer issues materials to the Seller for the performance by the Seller of Services thereon or otherwise for use in connection with the Order such materials shall be and remain the property of the Buyer.

Such materials shall be maintained in good order and condition by the Seller, shall be used only in connection with the Order and shall be at the risk of the Seller from the moment it takes delivery thereof until the time of redelivery. Delivery for the purposes of this paragraph shall mean the time of parting with physical possession by the Buyer and redelivery shall mean upon the regaining of physical possession and acceptance of redelivery by a duly authorised agent, employee or representative of the Buyer.

Any surplus materials shall be disposed of in accordance with the Buyer's directions and (without prejudice to Condition 18) any materials wasted as a result of the Seller's bad workmanship or negligence shall be replaced at the Seller's expense.

The Seller shall forthwith upon the Buyer's request at any time deliver up to the Buyer all materials issued to it by the Buyer.

17. CHANGES

The Buyer may at any time, by written notice to the Seller make changes in quantities, specifications, designs, testing, packing or destination of the Goods and postponements in delivery schedule(s) and/or changes to the nature, scope, extent or manner of provision of Services. If any such change causes a material increase or decrease in the cost of or the time required for performance, an equitable adjustment under this Condition shall be made within 14 days after receipt by the Seller of written notice of the change, and any such claim by the Seller not made within such period shall be deemed waived. No changed Order shall be binding upon the Buyer unless it is made in writing and signed by a duly authorised representative of the Buyer.

18. GUARANTEE

Without prejudice to the Buyer's rights at law the Seller guarantees the Goods and/or Services for 12 months from the date of delivery or completion against all defects not arising from a design furnished by the Buyer, and shall if so required by the Buyer upon the occurrence within the said period of 12 months of any fault or defect reimburse the price of the Goods, whereupon the Buyer shall return the same at the Seller's risk and expense or (at the Buyer's option) repair or replace the same or in the case of Services perform any remedial work which may reasonably be required by the Buyer at the Seller's cost or (at the Buyer's option) reimburse the price of the Services to the Buyer.

19. INDEMNITY

The Seller shall indemnify and hold the Buyer harmless from any and all claims, liabilities, damages or expenses (including consequential loss and damage).

(a) Arising from or in connection with any alleged or actual infringement by reason of the use or sale of the Goods or the performance or utilisation of the results of Services of any patent, utility model, registered design, copyright, trade mark or other proprietary right vested in any other person. This indemnity shall extend to any country where the Seller knows or has reason to believe that the Buyer intends to use, transfer or market the Goods or utilise or deal with Services and the Seller shall defend all such claims or actions and proceedings brought against the Buyer at the Seller's expense;

(b) Sustained by the Buyer or for which the Buyer may be liable as a result of the failure of the Seller to perform its obligations to the Buyer hereunder;

(c) In respect of death or injury caused by or being in any way whether directly or indirectly, a result of the performance of this Purchase Order, to any employee of the Buyer, or of its agents or sub-contractors or any other person on the Buyer's premises;

(d) In respect of any loss of or damage to any property, real or personal, of the Buyer or of any third party whether sustained by the Buyer or by any person to whom the Buyer may be responsible.

Save for death or injury caused by the negligence of the Buyer the Seller shall be solely responsible for the health and safety of any employee of the Seller, its agents or sub-contractors whilst on the premises of the Buyer.

**20. FORCE MAJEURE**

If the ability of the Buyer to accept delivery of the Goods and/or the provision or performance of Services is delayed hindered or prevented by circumstances beyond the reasonable control of the Buyer such delivery and/or provision or performance shall be suspended and if it cannot be effected within reasonable time after the due date then it may be cancelled by notice in writing by the Buyer to the Seller.

21. TRADE TERMS

If the Purchase Order refers to any international trade term such term shall be interpreted in accordance with INCOTERMS current at the date of the Purchase Order save insofar as such meaning shall be inconsistent with the express provisions of these Conditions of Purchase of the Purchase Order.

22. CANCELLATION

Notwithstanding and without prejudice to any other lawful right of the Buyer, the Buyer shall have the right to terminate the Contract in whole or in part at any time upon giving written notice to the Seller whereupon the Seller shall cease all work on the Order or on the cancelled part thereof as the case may be and the Buyer shall pay to the Seller such portion of the Order price as may be fair and reasonable having regard to the value of the work done, of Goods previously delivered and of Services performed under the Order. The Buyer shall have no other liability to the Seller by virtue of such termination.

23. LICENCES

If the performance of the Order requires the Buyer to have any permit or licence from any government or other authority at home or overseas, the Order shall be conditional upon such permit or licence being available at the time required.

24. PUBLICITY

The Seller shall not without the prior express written permission of the Buyer, publicise in any way the name of the Buyer or the destination or description of the Goods supplied or to be supplied under the Order.

25. SELLER'S DEFAULT

Without prejudice to any other rights or remedies to which the Buyer may be entitled, it may terminate this Purchase Order forthwith and without liability in the event that:

- (a) The Seller shall become bankrupt or under section 123 of the Insolvency Act 1986 is deemed unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings being commenced for the administration or liquidation of the Seller (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager is appointed of all or any part of its assets or undertaking; or
- (b) The Seller commits any breach of its obligations hereunder and fails to remedy such breach within 14 days of receipt of written notice from the Buyer requiring remedy thereof.
- (c) The exercise of the right granted to the Buyer under this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer. The Buyer shall have the right to enter the premises where the Goods are situated and take possession of the Goods and any materials the property in which has passed to or is vested in the Buyer.

26. WORK ON PREMISES

(a) Where the Order provides for Services to be carried out by the Seller at the Buyer's premises or any other premises stipulated by the Buyer, the Seller shall ensure that any person employed by it or carrying out work on its behalf at such premises:-

- (i) Observes all relevant legislation including but not limited to the Health and Safety at Work etc Act 1974 and any relevant regulations made there under:
- (ii) Disposes of waste in accordance with the Environmental Protection Act 1990 and complies with all relevant regulations made there under:



(iii) Complies with all requirements as to security on entering or leaving the premises: and]

(iv) Does not commit any act which will render the Buyer liable to any third party at common law or by virtue of any statute.

(b) The Seller shall maintain public liability insurance in the sum of not less than £3,000,000 for any one occurrence and shall if requested produce to the Buyer evidence of such insurance.

27. WAIVER

Failure on the part of the Buyer to exercise or enforce any right conferred by the Contract or at law shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

28. ASSIGNMENT

The Seller shall not without the prior written consent of the Buyer assign, transfer or sub-contract all or any part of the Purchase Order or delegate any duties hereunder and any such purported act shall be void.

29 .SEVERABILITY

In the event of any provision of these Conditions being or becoming void in whole or in part the other provisions hereof shall remain fully valid and enforceable and void provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these Conditions.

30. GOVERNING LAW

The Contract and the rights and obligations of the parties there under shall be governed by the construed and interpreted in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English courts save to the extent that the Buyer may require to obtain injunctive relief outside such jurisdiction.